

IN THE UTAH COURT OF APPEALS

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Mary Seager,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Petitioner,)		
)	Case No. 20080820-CA	
v.)		
)		
Department of Workforce)	F I L E D	
Services and Bear River Health)	(July 30, 2009)	
Department,)		
)	<table border="1"><tr><td>2009 UT App 206</td></tr></table>	2009 UT App 206
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Respondents.)		

Original Proceeding in this Court

Attorneys: Mary Seager, Logan, Petitioner Pro Se
Michael R. Medley, Salt Lake City, for Respondent
Department of Workforce Services

Before Judges Greenwood, Thorne, and Orme.

THORNE, Associate Presiding Judge:

Petitioner Mary Seager seeks review of the Department of Workforce Services Appeals Board's (the Board) order denying Seager unemployment insurance benefits. The Board's order reversed an Administrative Law Judge's (the ALJ) decision that Seager was entitled to benefits. We affirm the Board's order.

The Board adopted the ALJ's findings of fact pertaining to Seager's employment history. Seager worked for Bear River Health Department (the Employer) as a clinical treatment counselor from January 16, 2008, until May 2, 2008. Seager had health problems that affected her ability to work, and the Employer made various accommodations for her. When the Employer was unable to accommodate one of Seager's requests, she tendered her resignation by telephone on April 29, with an effective date of May 2. Later on April 29, Seager attempted to withdraw her resignation, but the Employer refused the offer of withdrawal and Seager's employment terminated on May 2. The ALJ concluded that these circumstances established a discharge by the Employer, but the Board reversed, concluding that Seager had quit her employment.

In cases where an employee attempts to withdraw a notice of resignation, "the reasonableness of the employer's refusal to continue the employment is the primary factor in determining if the claimant quit or was discharged." Utah Admin. Code R994-405-106(6)(a). Here, the Board determined that the Employer acted reasonably in refusing to allow Seager to withdraw her resignation, which represents a factual finding by the Board. Cf. Ilott v. University of Utah, 2000 UT App 286, ¶ 18, 12 P.3d 1011 ("[Q]uestions of reasonableness necessarily pose questions of fact which should [ordinarily] be reserved for jury resolution." (internal quotation marks omitted)). We affirm the Board's factual findings if they are supported by "substantial evidence when viewed in light of the whole record before the court." Ameritemps, Inc. v. Labor Comm'n, 2005 UT App 491, ¶ 8, 128 P.3d 31 (internal quotation marks omitted), aff'd, 2007 UT 8, 152 P.3d 298. "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Grace Drilling Co. v. Board of Review, 776 P.2d 63, 68 (Utah Ct. App. 1989) (internal quotation marks omitted).

Here, the Board made specific findings regarding Seager's employment history and its reasons for determining that the Employer's decision was reasonable:

[Seager's] history with the Employer reflects indecision, hesitation, and vacillation. With every assignment [Seager] found a reason why she could not complete the task and requested an accommodation. The Employer accommodated [Seager] within its ability to do so. [Seager] even requested to be returned to an assignment she initially told the [E]mployer she was physically unable to do, when she decided that assignment was better than the subsequent assignments. The Board finds the Employer was reasonable in not allowing [Seager to] rescind her resignation. The Employer needed an employee who could complete assignments and not "shop" around by requesting accommodations until she found an assignment she liked. Since the Board has found the Employer's decision reasonable, the separation is a quit.

The record as a whole provides substantial evidence in support of the Board's findings.

The record includes evidence that when the Employer assigned Seager to a Garden City facility, she requested an accommodation due to knee problems. Because of her knee problems, Seager

claimed to be unable to climb the stairs located at that facility. The Employer accommodated Seager by assigning her to intensive outpatient responsibilities (IOP) so that she would not have to return to Garden City. The Employer presented testimony that IOP consists of four-hour blocks of group session therapy and that the Employer requires all treatment counselors to conduct IOP as part of their duties and responsibilities. Initially Seager did not raise any medical issues about the IOP reassignment but later expressed concern "that maybe that was too--too long of a period for her to be standing and asked if maybe she could go back to Garden City."

This evidence, along with the remainder of the record, substantially supports the Board's findings, including its ultimate finding that the Employer acted reasonably in refusing to allow Seager to withdraw her resignation. Although the Board's interpretation of the evidence is perhaps not the only possible interpretation, it is one that "a reasonable mind might accept" in light of the record as a whole, and is thus supported by substantial evidence. See Grace Drilling Co., 776 P.2d at 68 (citation and internal quotation marks omitted).

Accordingly, we affirm the Board's decision denying Seager unemployment insurance benefits.

William A. Thorne Jr.,
Associate Presiding Judge

WE CONCUR:

Pamela T. Greenwood,
Presiding Judge

Gregory K. Orme, Judge